



## Nantucket Land Council, Inc.

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October 29, 2015

Robert DeCosta Chair  
Nantucket Board of Selectmen  
16 Broad Street  
Nantucket, MA 02554

RE: "Surfside Commons", Nantucket, Massachusetts

Dear Members of the Nantucket Board of Selectmen:

Please accept this letter on behalf of the Nantucket Land Council ("NLC") in reference to the application for project eligibility/site approval submitted to the Massachusetts Housing Partnership ("MHP") by Surfside Commons, LLC (the "Applicant") for a development of sixty (60) units off of Surfside Road, Nantucket, Massachusetts ("Development"). For the reasons set forth in detail below, we respectfully advise that the Applicant's request for project eligibility/site approval cannot be granted under the standard of review employed by MHP. Accordingly we urge the Board of Selectmen to likewise urge MHP to deny the Applicant's request for project eligibility/site approval.

In summary, our recommendation is based on our review of the Application, our personal knowledge of the locus and the immediate neighborhood, including the history of the site; of relevant environmental and infrastructural constraints; and of Nantucket's robust and documented planning for affordable housing and growth management to reach two conclusions:

First, the Application fails to satisfy threshold requirements and policies of MHP designed to protect the public's interest and properly promote affordable housing. Second, and most importantly, the Application fails to address substantive issues particular to the site in a manner that would give the Board of Selectmen any confidence of the appropriateness of this project. Presenting the "bare minimum" in its application for project eligibility/site approval to MHP, the Board of Selectmen and the public is not sufficient or acceptable.



As we discuss in detail below, there is no rational support for issuing project eligibility approval for this project at this location given both threshold technical and substantive deficiencies readily apparent. The proposed project for this locus is anything but sustainable, smart or appropriate and we ask the Board of Selectmen to request MHP to reject the application for project eligibility approval now, before additional private and public resources are expended.

1. The development does not qualify for the program under which it has applied, nor does it have any eligible federal or state subsidy as required under GL. c. 40B

The Applicant has ostensibly filed an “Information Form for Project Eligibility Letter”. On the Application form, the Applicant has identified in “Section IV: Project Financing” (page 7 of the Application Form), that the proposed program subsidy is “MHP Fixed Rate Permanent Financing or 5 + 5 Program”.

With regard to the proposed project’s “affordability”, the requirements of both the “Fixed Rate Permanent Financing” and “5 + 5 Program” are the same: where the project will not provide dwelling units at 50 percent of median income—which this project does not—or at least 50 percent of the dwelling units at 80 percent of median income—which this project does not—no less than 25 percent of the dwelling units must be available to households earning *less than* 80 percent of the median area income.

As included in the applicant’s “project financing” information (see pages 34 and 47 of the Application), the proposed below market rate dwelling units are to be rented *at—not below*-80 percent of the median area income.

Moreover, and anticipating a response from the applicant that it reserves the right to pursue project financing from others, there is no letter of interest from a current FHLBB member bank confirming that NEF funds will be used for the project. Where the Applicant has filed for project eligibility approval that violates the unambiguous requirements of MHP and has not submitted even the fig leaf of a federal subsidy, certainly no approval of this Application can be forthcoming where MHP must find (as required by 760 CMR 56.04 (4)) that the Proposed Project is “eligible under the requirements of the housing subsidy program...”.

The Applicant has submitted no evidence of any other federal or state subsidy, without which the project does not qualify for *any* approval by MHP. The Application should be denied on this ground alone.

2. The Deed to the Locus Prohibits the Uses and Structures Being Proposed

As a second threshold deficiency for project eligibility/site approval, the Applicant also failed to demonstrate site control. Absent evidence of site control, MHP should deny further review of the Application, and certainly cannot grant approval.

The purchase and sales agreement identifies the locus as identified on the Plan of Land found at Plan No. 2015-43 with the same referencing Book 1410, Page 205 (Nantucket Registry of Deeds). The application identifies the locus as containing 108,533 square feet of land. The Plan of Land identifies three additional parcels (7, 8 and 10) that, when added to the land referenced in the above noted deed, comprise 108,533 square feet<sup>1</sup>.

Parcels 7, 8 and 10 were acquired from the Town of Nantucket on or about June 25, 2015 and recorded in a deed recorded at the Nantucket Registry of Deeds at Book 1488, Page 213. The deed conveying the three parcels—7, 8 and 10—contains unambiguous restrictions and was premised upon the “Grantee’s warranty and representation to the Grantor that such Parcels shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting lot at 106 Surfside Road...(collectively with the Parcel, the ‘Combined Premises’).”

Most notably, the deed states, “[t]hat no part of such Parcels or the Combined Premises shall hereafter be use for non-residential purposes...” and second, that the Parcels “[a]re conveyed subject to permanent restrictions...forever restricting the Parcels and Combined Premises to residential use...”.

A review of the application makes clear that the proposed uses for the locus as contain non residential uses and structures—the “clubhouse” and the “pool”—and the proposed principal use—“apartment” buildings—violate the deed’s clear prohibitions and the “Grantee’s warranty and representations that the assembled land would be used for a single family dwelling unit. The proposed use of the locus as contained in the application before MHP violate the express conditions and restrictions imposed on the locus and, accordingly, the applicant lacks the requisite site control to pursue this matter with MHP.

The NLC and the Board of Selectmen are aware of the low evidentiary bar applied by MHP during the project eligibility/site approval process. Yet we assume that the deed upon which the applicant relies must permit the application before MHP. It does not. Hence, as there is no support in the Application for a finding that the Applicant controls the site, as required by 760 CMR 56.04 (4), the Application must be denied.

3. The Initial Capital Budget contains unsupported and contrived costs that serve to disguise the true costs of the project and profit to the developer

As a related threshold matter, the project financing/capital budget provided by the Applicant includes vague and unexplained expenses, which intentional or not, serve to obscure the true costs of the project, and the profit to the developer. The hard costs portion of the pro forma include a \$601,071 contingency cost, and an additional \$1,751,000 cost for unidentified “Site Improvements”. The soft costs portion of the pro forma contains a \$116,357 contingency, \$140,000 for “Owner’s Rep” and \$120,000 for “marketing” among many other development soft costs.” The “Gen’l Condition, OH Profit” value of “11%”

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<sup>1</sup> Discussed further below, 60 dwelling units on 108,533 square feet results in a development density of 24 dwelling units/acre.

appears to violate MHP's rules governing maximum developer's fee. In addition, the claimed land acquisition value of \$1.5M is unsupported (note that the purchase and sales agreement contains conflicting sales prices of \$1.5M and \$1.475) and accordingly appears to violate MHP's "Allowable Acquisition Cost".

Simply stated, we respectfully suggest to the Board of Selectmen that many of the included costs within the capital budget, including the proposed contingency costs, are nothing other than a means to increase the project's costs on paper, so as to justify an increased number of units "needed" for the project to be financially feasible. In this case, the pro forma's contingency and unidentified costs serve no more than to disguise developer profits for which comprehensive permit projects are renowned.<sup>2</sup> In sum, where the Application at best reflects a lack of transparency on site control, land valuation, and budgeting, we trust that MHP can appreciate that each these threshold deficiencies individually and collectively merit denial of this Application.

4. The proposed development is entirely inconsistent with Nantucket's Master Plan, Open Space Plan and Affordable Housing Plan

Nantucket has an extensive history of master planning for growth and development through a robust public process, including a specific area plan for Surfside. The Nantucket Master Plan balances residential and commercial growth with preservation of natural resources and open space, according to sound planning principles and in consideration of Nantucket's existing development patterns. Even the Housing Appeals Committee has recognized the legitimacy of such planning efforts. See 28 Clay Street v. Middleborough Board of Appeals, No. 08-06, September 28, 2009.

The Master Plan designates certain areas of Nantucket appropriate for increased or intensive housing development. The proposed site is decidedly not one of them. The proposed site is not located within or near an existing area of concentrated development, nor is it within or near any area designated in the Master Plan as appropriate for future concentrated development. To the contrary, it is a parcel located significantly distant from any commercial activity. This is directly *contrary* to numerous goals and strategies of the Comprehensive Plan not to mention the April 2015 RKG Report on "Workforce Housing Needs Assessment". While the Application goes to great length to include the entirety of the RKG Report, it fails to make any logical connection to the same and the Application itself contradicts the very goals articulated in the Report<sup>3</sup>.

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<sup>2</sup> As MHP is aware, any profit in excess of that allowed by the subsidy program is required to be returned to the municipality, not retained by the developer. We advise the Board and ask the Board to remind MHP, that the Town of Grafton was recently successful in settling a \$54M lawsuit regarding the retention of excess profits from a developer in a comprehensive permit project.

<sup>3</sup> Among the many conflicts with the RKG Report, the current proposal, with below market rate units at 80% of median income, proposes development pursuant to G.L. c.40B, s.20-23 whereas the Report unambiguously recommends pursuant of other mechanisms.

The proposed project entails the crowding of buildings, parking, and related development on too small a parcel and it proposes a virtual wall of buildings at a density totally inconsistent with rational planning techniques or objectives. Together with its location remote from existing development, the project manages to speak negatively to *every factor* MHP purports to consider in the site approval process.

Although MHP is no more a planning agency than the Housing Appeals Committee, surely the agency recognizes that consistency with a municipal comprehensive plan is a means to measure a project's compliance with 760 CMR 56.04(4)(c): "that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns." Inconsistent with Nantucket's Master Plan, Open Space Plan and Affordable Housing Plan, this project fails such measure and the Application must be denied.

5. The proposed development is wholly out of character with its neighborhood with respect to density, scale, massing and height of buildings

The Applicant proposes a 60-unit project (recently revised to 56 units) on a buildable parcel of slightly over two acres, yielding a density, of 24 units per acre. This density is entirely out of character with the adjacent single-family neighborhood, with no context or justification other than maximizing developer profit. There are areas of Nantucket with existing dense development, or targeted by the Town for such dense development. The project site is not one of them.

There are no large-scale residential or commercial buildings proximate to the site. The project introduces into the existing single-family neighborhood massive, wall-like buildings that are also wholly out of scale and character with adjacent homes and streetscape. The four main monolithic buildings stretch across the width of the property, to heights over forty (40) feet. The massing, scale and height of these buildings dwarf neighboring residences and is completely out of scale with the neighborhood's and Nantucket's historic character, notwithstanding the application's insulting—and wrong—comparisons to "some of the most desirable and expensive neighborhoods on the Island such as Town and Sconset" (Application page 2).

Unless MHP has concluded that the character and fabric of existing neighborhoods are irrelevant; that visual impacts on a streetscape and neighboring residences are irrelevant - in short, that the context of a proposed project may be ignored in its entirety - this Application must be denied. See 760 CMR 56.04(4)(c)("that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, *conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns*")(emphasis supplied).

6. The Project Scores Zero (0) on the Commonwealth's "Sustainable Development Principles" or MHP's and MassHousing's "Smart Growth" Criteria Scorecard.

Contrary to the Applicant's tepid and cynically unsupported claims found at pages 60 and 61 of the application, this project does not represent "Sustainable Development." Instead, it fails to meet each of MassHousing's "Smart Growth Criteria," which incorporate the Commonwealth's "Sustainable Development Principles."

- The project does not "contribute to revitalization of town center"
- The project does not "preserve and reuse" historic structures;
- The project does not have a "letter of support from the Chief Elected Official";
- The project cannot be said to "concentrate development" - unless by "concentrate" is meant "*cover the entire area with buildings, parking lots and infrastructure*";
- The project does not "restore and enhance the environment";
- The project is not "fair"; it does not "improve the neighborhood" or include a "concerted public participation effort";
- The project does not "conserve resources";
- The project provides no realistic "transportation choice[s]"; the project is isolated from commerce and car-dependent; and a bike trail is not a realistic year-round transit option
- The project does not "increase job opportunities";
- The project does not "foster sustainable businesses"; and
- The project does not "plan regionally".

With a score of zero (0) on Commonwealth's and MHP's own "Scorecard," we assume that the agency cannot but reject this Application. If approval is granted notwithstanding the project's failure to conform to the criteria, we ask the Board of Selectmen to ask why MHP bothers to have criteria at all.

For all the reasons noted above, we see no rational means of MHP issuing a project eligibility letter for the proposed project. Assuming *arguendo* that MHP is willing to ignore its own regulations, policies and normative guidelines for land development and issue a project eligibility letter for this proposal, we request that the Board of Selectmen ask that the following minimum conditions be imposed:

1. The Applicant should be required to provide evidence that the deed for the locus permits the use and construction of the proposed structures proposed;
3. The applicant should be required to submit supporting documentation for its development budget, and submit a revised pro forma without inclusion of contingency costs or unidentified "other" costs;
4. The Applicant should be required to submit a revised project application consistent with the Town's Master Plan, Open Space Plan and Housing Plan;
5. The Applicant should be required to submit a revised project application with a proposed density, scale, massing and height consistent with the context of the project site;
6. The Applicant should be required to submit a revised project application that is consistent with the Commonwealth's "Smart Growth Criteria"
7. The applicant should be informed that the Town of Nantucket will not grant waivers from local regulations without strict and audited proof that waivers from these regulations is required to keep the project from becoming uneconomic.

### Conclusion

Any first year planning student, any credible developer and any competent site designer knows that developing a site requires as a first—*not as a final step*—the determination of a site's constraints and limitations. Outrageously, in this case, the Applicant has done the opposite. They have proposed a massive project first—without even a rudimentary evaluation of the site's constraints—and now seek local, state and federal endorsement of the same and its attendant drain of taxpayer resources.

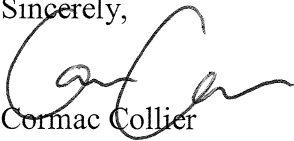
We ask the Board of Selectmen to suggest that MHP prevent any further waste of public and private dollars reviewing this poorly conceived and cynical application.

We know, that MHP knows, that once a project eligibility letter is issued, the Applicant has little incentive to work with the host community and little incentive to do anything but wait out the hearing process for a chance to appear before the Housing Appeals Committee. We have little doubt that such a harsh and sad conclusion is accurate in the present case. MHP has an opportunity to end this process now for this ill fated and wholly inappropriate project.

We ask that MHP reject this application as the agency must—it violates every requirement, policy and standard the agency has established. Granting project eligibility approval for this project would make clear to the Commonwealth's 351 cities and towns that no project eligibility application would ever be bad enough to warrant disapproval.

Thank you for your time and consideration of our letter.

Sincerely,



Cormac Collier  
Executive Director

Cc:

Nantucket Planning and Land Use Department  
Massachusetts Housing Partnership  
Nantucket Zoning Board of Appeals